

WELSA HEIRSHIP DETERMINATION  
OF BENJAMIN B. WILSON

: Order Docketing Appeal and  
: Affirming Decision  
:  
: Docket No. IBIA 94-134-W  
:  
: July 13, 1994

Appellant Denise Bellecourt Levy, guardian ad litem for John Matthew Clark, seeks review of a June 23, 1994, order determining the heirs of Benjamin B. Wilson (WC 0207) issued by Administrative Judge Sandra Massetto under the White Earth Reservation Land Settlement Act of 1985, 25 U.S.C. § 331 note (1988) (WELSA). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant's notice of appeal shows that the only basis for her appeal is the alleged unconstitutionality of Minn. Stat. § 525.172 (repealed by Act of May 29, 1985, 1985 Minn. Laws 851). However, Judge Massetto stated that her decision in this matter was not based on sec. 525.172. Instead, she found that Martha Jane Sanders, who was Benjamin's sister and John's grandmother, was Benjamin's heir because she was living when Benjamin died. Based on this finding of fact, Judge Massetto determined that John was not an heir.

Appellant has not disputed the finding that Martha was alive at the time of Benjamin's death.

The Board agrees that sec. 525.172 was not relevant to the heirship determination for Benjamin. Although Martha subsequently died (see Heirship Determinations of Martha Jane Sanders and Peter A. Wilson, 26 IBIA 116 (1994)), the dispositive time for determining Benjamin's heirs was the date of his death. The Board concludes that the reasons articulated for the appeal are not applicable, and that there are no circumstances under which John could be found an heir of Benjamin. Based on these conclusions, it finds that no useful purpose would be served by delaying resolution of this matter.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from Judge Massetto's June 23, 1994, order is docketed and the order is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge